Decision **DRAFT DECISION OF ALJ BROWN** **(Mailed 1/3/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning. (U 39E)	Rulemaking 04-04-003 (Filed April 1, 2004)

DRAFT DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY TO PURCHASE AND DELIVER GAS TO SUPPLY RMR GENERATING UNITS

I. Summary

This Draft Decision (DD) authorizes Pacific Gas and Electric Company (PG&E) to purchase and deliver gas, if needed for electric and gas system reliability purposes, to supply generating units under the California Independent System Operator (CAISO) reliability must- run (RMR) contracts with Calpine Company (Calpine) and its affiliates,[1] and authorizes PG&E to recover from its ratepayers the costs associated with these activities.

II. 2Background

On December 15, 2005, PG&E filed a motion for authorization to purchase and supply gas to certain generating units presently owned by Calpine and concurrently filed a motion for an order shortening time (OST) for responses to the motion. On December 16, 2005, the assigned Administrative Law Judge (ALJ) granted the OST and directed that responses were due December 22, 2005.

[1] Calpine and its affiliates hereinafter will be referred to as Calpine.

One response was received from Californians for Renewable Energy, Inc. (CARE).

PG&E requested this immediate relief due to rising concerns about Calpine's financial situation, including the possibility that the company, and/or its affiliates, might seek U. S. bankruptcy court protection. Subsequent to PG&E's filing, Calpine filed for Chapter 11 bankruptcy court protection on December 20, 2005.

Calpine owns and operates several power plants in California and through these plants controls substantial amounts of electric generation capacity in California, especially in PG&E's service territory. These power plants are used to: (1) provide energy under contracts with the California Department of Water Resources (CDWR); (2) dispatch under the RMR contracts with the CAISO; and (3) provide sales of energy into the market. Calpine uses PG&E's gas system to transport gas to the Calpine power plants.

PG&E is particularly concerned with the continued reliable operation of Calpine's plants in Northern California and Calpine's ability to secure and deliver the gas supplies necessary to run the plants. Some of these plants are designated by the CAISO as RMR plants. If the plants under RMR contract are unable to produce output when required by the CAISO, PG&E claims its local grid reliability could be in jeopardy.

CDWR has large power purchase contracts with Calpine that are used to meet the electric resource needs of California consumers. While the revenue requirement of the Calpine/CDWR contracts are borne by the customers of the three investor owned utilities (IOUs), PG&E, Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E), these contracts are allocated primarily to PG&E for administrative and operational purposes.

PG&E is further concerned with Calpine's ability to deliver and transport the volumes of gas necessary to fuel its plants - especially in PG&E's service territory.

In summary, PG&E is seeking Commission authorization to be prepared to deal with potential situations that could threaten electric and gas reliability in PG&E's service territory due to Calpine's financial situation.

III. Responses

CARE is particularly interested in the CDWR/Calpine contracts. CARE alleges in response to PG&E's motion, as it has in multiple forums and in other Commission proceedings, that the CDWR contract prices are too high. CARE therefore, urges the Commission to order PG&E to exercise "step-in" rights under any CDWR/Calpine contracts, rather than to follow through with the steps outlined in PG&E's motion. CARE's request is beyond the scope of this Decision and will not be addressed at this time.

IV. Discussion

The Commission's Energy Division (ED) is aware of Calpine's financial situation and is monitoring any potential risks to the electric and gas systems and consulting with CAISO, PG&E and the other IOUs for which Calpine plants are needed for system reliability. PG&E represents that it is supportive of the ED's role and if Calpine's situation necessitates, it will work with the ED on determining how much gas is necessary to run each plant for reliability purposes, other key issues regarding the Calpine plants, their RMR contracts, CDWR contracts and any other issues potentially impacting gas system reliability.

We are aware that since Calpine's bankruptcy filing on December 20, 2005, the U.S. Bankruptcy Court was reported as granting Calpine emergency approval to continue its trading operation, which buys gas for its generation units. In addition, Calpine has apparently secured some of the Debtor-in-Possession financing it requested from the Bankruptcy Court to maintain its operations and the company has stated that it would continue to provide reliable power supplies.

We therefore do not see any situation that would presently require PG&E to intervene in Calpine's operation of its Northern California plants. However, understanding that there are uncertainties associated with any bankruptcy filing, we will give PG&E the tools now to safeguard its electric and gas system reliability and resource adequacy, rather than waiting for a reliability or resource problem to develop.

While Calpine's plants contribute overall to the state's electric supply, Calpine accounts for approximately 25% of PG&E's requirements. It is therefore prudent to take proactive steps and to have a contingency plan in place in the event that Calpine should be unable to purchase and deliver gas and PG&E's system faces reliability problems.

What PG&E is seeking by way of this immediate relief is the authorization to purchase and deliver gas for certain Calpine plants, if needed, for its electric and gas system reliability purposes. In addition, it seeks to recover the net cost of such purchases from retail electric customers. We agree, and authorize PG&E to do as requested to strengthen its ability to protect its electric and gas systems from potential problems that could occur due to Calpine's financial situation.

We therefore direct PG&E to work with both the CAISO and Calpine, subject to any necessary bankruptcy court approval, to ensure that if it should become necessary for PG&E to procure and deliver gas to the Calpine generating units under RMR contracts with the CAISO in its service territory, that PG&E can get reimbursed by Calpine directly or through assignment of Calpine revenues from the CAISO for costs incurred in that situation.

In regards to cost recovery, we also adopt PG&E's proposal that the net costs of such gas purchases is subject to verification by the ED and is recoverable through PG&E's Energy Resource Recovery Account (ERRA).

PG&E should also demonstrate that it has developed adequate procedures for implementing the authority granted under this Decision. As such, PG&E is directed to provide the information requested in Appendix A to this Decision.

V. Comments on Draft Decision

The draft decision was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The 30-day period for public review and comment is reduced under Rule 77.7(f) and comments are due January 9, 2006. No replies will be accepted.

Due to the uncertainties surrounding the beginning phase of any bankruptcy filing, we find that the public necessity requires the reduction of the comment period here. The public interest in granting prompt authorization to PG&E clearly outweighs the public interest in the full comment period. We find it is prudent to consider granting PG&E the contingent authorization quickly, rather than waiting until after it is needed, potentially compromising PG&E's gas and electric system reliability.

PG&E is requested to address in its comments the changed circumstances since the request was filed on December 15, 2005, including Calpine's obtaining Debtor-in-Possession financing.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E is seeking authorization to purchase and deliver gas, if needed for electric and gas system reliability purposes, to ensure that electric plants needed for reliability which are presently owned by Calpine are available to the CAISO for RMR contracts in PG&E's service territory.

2. Calpine owns and operates several power plants in California and through these plants controls substantial amounts of electric generation capacity in California.

3. PG&E requested this relief due to concerns about Calpine's financial situation and its ability to continue reliable operation of its plants in Northern California and to secure and deliver the gas supplies necessary to run the plants under RMR contracts with the CAISO in PG&E's service territory.

4. Calpine uses PG&E's gas system to transport gas to the Calpine power plants in Northern California

5. On December 20, 2005, Calpine filed for U.S. bankruptcy court protection.

6. It is reasonable to grant PG&E authorization to be prepared to deal with potential situations that could threaten electric and gas reliability in PG&E's service territory due to Calpine's financial situation.

7. It is reasonable to allow PG&E to recover the net costs of activities undertaken to preserve the reliable operation of Calpine's plants in Northern California under RMR contracts with the CAISO in PG&E's service territory through its ERRA, after PG&E has provided the information to the ED as

requested in Appendix A and after verification by the ED of that information and the net costs.

Conclusions of Law

1. It is reasonable to grant PG&E the authorization to purchase and deliver gas, if needed for electric and gas system reliability purposes, to ensure operation of Calpine's electric plants under RMR contracts with the CAISO for PG&E's service territory.

2. It is reasonable for PG&E to recover the net costs of such gas purchases, subject to verification by the ED, through PG&E's ERRA.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to purchase and deliver gas, if needed for electric and gas system reliability purposes, to ensure that those electric plants presently owned by Calpine Company and its affiliates (Calpine) under RMR contracts with the California Independent System Operator (CAISO) for PG&E's service territory are available to the CAISO under those RMR contracts.

2. PG&E is to recover the net costs of such gas purchases, subject to verification by the Energy Division (ED), through PG&E's Energy Resource Recovery Account (ERRA).

3. If the situation should warrant, PG&E is directed to seek and obtain an agreement with Calpine, subject to any bankruptcy court approval that may be required, (and if necessary with the CAISO) whereby the revenues that Calpine will receive from power sales will be used to reimburse PG&E when PG&E purchases gas for delivery to the Calpine generating units in PG&E's service

territory. Revenues received by PG&E shall be credited to its retail electric customers.

4. PG&E is granted a waiver under Gas Rule 26D to allow its electric and gas departments to share non-public customer specific Calpine information necessary to protect electric and gas system reliability and, if needed, to enable its electric gas procurement organization to purchase gas under this authorization for Calpine plants under reliability must run (RMR) contracts.

5. PG&E's right to terminate service under its gas rules and tariffs to Calpine is still extant, provided that PG&E is not to terminate end-use service to the plants under Schedule G-Bal or backbone gas transportation service to Calpine until it has sent prior written notification to the Commission's Executive Director, Director of the ED, and CAISO of its intent to terminate service. The notification letter shall include the reasons for the termination and describe any impacts it may have on electric and gas system reliability.

6. PG&E is to continue to cooperate with the Commission's ED to monitor the situation with Calpine and to be prepared to take additional actions, if necessary.

7. PG&E is authorized to file appropriate tariff changes to conform its tariffs to comply with the authorization granted by this decision.

8. Tariff changes shall be filed by advice letter.

9. PG&E shall provide the information requested in Appendix A to the Commission's ED within 10 days of the effective date of this decision.

This order is effective today.

Dated ______________________________, at San Francisco, California.

APPENDIX A

Pacific Gas and Electric Company (PG&E) shall provide the following information to Energy Division (ED) regarding the possible implementation of the authority granted in this draft decision. PG&E's response should be as specific as possible and demonstrate to the Commission that the utility is adequately prepared to undertake the operations authorized by this decision. However, given the uncertain nature of the Calpine Company (Calpine) bankruptcy situation and need for flexibility, PG&E should not consider itself constrained by the information it provides. PG&E may submit this information confidentially if necessary. All references herein to Calpine plants are to the plants under RMR contracts with the CAISO within PG&E's service territory.

1. Describe how PG&E will determine that gas purchases for any Calpine plants are needed for electric and gas system reliability purposes.

2. Describe the sources and type of information PG&E will consider in determining whether to purchase gas for the Calpine plants.

3. Describe the procedures PG&E will undertake to determine gas volumes to purchase and other operational arrangements needed to deliver gas to any Calpine plant.

4. Describe what strategies PG&E will employ to conduct its gas procurement strategies for the Calpine plants and what steps the utility will take to minimize the cost impact on its ratepayers.

5. Discuss the actions PG&E has or will take to secure an agreement with Calpine and CAISO, if necessary, per Ordering Paragraph 3 of this draft decision. PG&E will inform ED of any substantive developments in these negotiations.

(END OF APPENDIX A)